

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

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FIFTH APPELLATE DISTRICT

In re AMANDA W., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

AMANDA W.,

Defendant and Appellant.

F045903

(Super. Ct. No. 500814)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Stanislaus County. Donald E. Shaver, Judge.

Danalynn Pritz, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Mary Jo Graves, Assistant Attorney General, Stan Cross and Tami M. Warwick, Deputy Attorneys General, for Plaintiff and Respondent.

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INTRODUCTION

On February 10, 2004, appellant Amanda W. admitted allegations from two petitions filed pursuant to Welfare and Institutions Code section 602 in July and

*Before Vartabedian, Acting P.J., Wiseman, J., and Dawson, J.

September 2003 that she committed felony robbery (Pen. Code, § 211) and misdemeanor burglary (Pen. Code, §§ 459 & 460).¹ Amanda had three prior sustained petitions dating back to 1998.²

On May 11, 2004, the juvenile court conducted a contested dispositional hearing.³ The probation officer's report recommended that Amanda be committed to the California Youth Authority (CYA) for the maximum term of commitment. In calculating Amanda's maximum term of confinement, the probation officer aggregated Amanda's most recent offenses along with her felony adjudication for felony vehicle theft (Veh. Code, § 10851) in 1999.⁴

During the disposition hearing, Amanda's counsel challenged placement in CYA due to recent reports and investigations critical of how CYA is operated. At the conclusion of the hearing, the juvenile court found CYA is capable of providing the reformatory discipline and treatment necessary for Amanda.

¹ The petition filed July 22, 2003, originally alleged Amanda committed felony carjacking (Pen. Code, § 215, subd. (a)). The petition filed September 3, 2003, originally alleged Amanda committed felony theft (Pen. Code, § 487) and misdemeanor possession of not more than 28.5 grams of marijuana (Health & Saf. Code, § 11357, subd. (b)).

² On October 26, 1998, Amanda admitted misdemeanor violation of taking a vehicle (Veh. Code, § 10851) and theft of personal property (Pen. Code, § 484, subd. (a)). Amanda was placed on probation. On April 7, 1999, Amanda admitted allegations that she feloniously took a vehicle and violated the terms of her probation. The juvenile court continued Amanda on probation. On May 7, 2000, Amanda admitted a misdemeanor allegation that she possessed narcotic paraphernalia (Health & Saf. Code, § 11364). The court continued Amanda on probation and ordered that she attend a treatment program. The juvenile court found Amanda violated the terms of her probation by absconding from a group home. On December 17, 2002, the court continued Amanda on probation but ordered she be removed from her mother's custody.

³ Amanda turned 18 in January 2004. The offenses alleged in the instant petition occurred, however, when she was 17 years old.

⁴ The probation report noted in error that the maximum term of confinement for robbery was 72 months. In fact, it is 60 months. The juvenile court detected the error prior to the end of the disposition hearing.

Amanda and her aunt testified at the disposition hearing seeking to have Amanda placed in a drug treatment facility. Defense counsel argued Amanda should be placed in a local program. The prosecutor argued Amanda had been sent to the Genesis program, a comprehensive drug treatment program, but had absconded from the program. The prosecutor agreed Amanda had a severe substance abuse problem but argued that CYA would provide the best treatment for her.

The juvenile court found Amanda's recent robbery offense was serious and that local treatment programs would not reform her. The court found Amanda's offenses occurred while she was still a minor and ordered her commitment to CYA for the maximum term of commitment, 72 months.⁵ Without discussion, the court found that Amanda was not a student with exceptional needs.

On appeal, Amanda contends the juvenile court failed to make a proper inquiry into whether she had special needs. We requested further briefing from the parties pursuant to Government Code section 68081 on the issue of whether the juvenile court failed to set a maximum term of physical confinement in CYA based on the facts and circumstances of the matter before it pursuant to Welfare and Institutions Code section 731.

SECTION 731 DETERMINATION OF MAXIMUM TERM OF CONFINEMENT IN CYA

The juvenile court failed to make a proper determination of Amanda's maximum term of confinement to CYA pursuant to the recent revision of Welfare and Institutions Code section 731. Operative January 1, 2004, the Legislature amended Welfare and Institutions Code section 731, subdivision (b), adding the language italicized below: "A minor committed to the Department of the Youth Authority may not be held in physical

⁵ The 72 month commitment term was calculated by making robbery the principal term. Robbery has a maximum term of commitment for an adult offender of 60 months. The court aggregated this offense to misdemeanor burglary in 2003 and felony vehicle theft in 1999 for additional terms respectively of 4 months and 8 months.

confinement for a period of time in excess of the maximum period of imprisonment which could be imposed upon an adult convicted of the offense or offenses which brought or continued the minor under the jurisdiction of the juvenile court. *A minor committed to the Department of the Youth Authority also may not be held in physical confinement for a period of time in excess of the maximum term of physical confinement set by the court based upon the facts and circumstances of the matter or matters which brought or continued the minor under the jurisdiction of the juvenile court, which may not exceed the maximum period of adult confinement as determined pursuant to this section.* This section does not limit the power of the Youth Authority Board to retain the minor on parole status for the period permitted by Section 1769.” (Welf. & Inst. Code, § 731, subd. (b), italics added.)

“In construing a statute, our role is to ascertain the Legislature’s intent so as to effectuate the purpose of the law. [Citation.] In determining intent, we must look first to the words of the statute because they are the most reliable indicator of legislative intent. [Citation.] If the statutory language is clear and unambiguous, the plain meaning of the statute governs. [Citation.]” (*People v. Lopez* (2003) 31 Cal.4th 1051, 1056.)

The amended version of Welfare and Institutions Code section 731, subdivision (b) plainly requires the juvenile court to set a maximum term of confinement in CYA, which may be less than the maximum period of adult confinement that would otherwise be warranted, based on the facts and circumstances of the matter or matters before it. (*In re Carlos E.* (2005) 127 Cal.App.4th 1529, 1537-1543; *In re Sean W.* (2005) 127 Cal.App.4th 1177, 1181-1189.)

The juvenile court failed in this case to set a maximum term of physical confinement in CYA based on the facts and circumstances of the matter before it and we will remand this case for the juvenile court to reconsider Amanda’s maximum term of confinement in light of our recent opinion in *Carlos E.*

SPECIAL NEEDS

Amanda contends the juvenile court failed to properly evaluate whether she has special needs. Respondent replies that Amanda was a good student when she took her medications and passed all portions of her GED examination except for the mathematics segment.

The probation report initially notes that Amanda is not a special education student. Amanda has shown the ability in the past to achieve straight “A’s” in school. She had passed all portions of the GED examination except for mathematics. Child Protective Services removed Amanda’s siblings from the care of their grandmother because she was homeless. Amanda’s mother was apparently in jail at the time of the disposition hearing. The juvenile court noted at the disposition hearing that Amanda’s case originally began as a Welfare and Institutions Code section 300 action before it became a criminal matter.

Amanda admitted to the probation officer that her biggest problem has always been her use of methamphetamine. There is evidence in the record that Amanda was being treated with psychotropic medication. Amanda suffers from a recurrent and severe major depressive disorder and Attention Deficit Hyperactivity Disorder. Amanda reported her impulsivity and lack of concentration hinder her from working well in a program.

The probation officer’s report notes Amanda was admitted to a Drug Court Program on December 7, 1999, but her performance was minimal and she was eventually discharged from the program. On November 20, 2000, Amanda was placed at the Genesis Group Home in Fresno but remained there only three months before absconding. It took eight months to locate Amanda. She was placed next into the First Step Group Home in Mariposa. Amanda again absconded from her group home. A counselor at First Step reported that Amanda failed to make any progress in her therapy, was very cunning, and admitted to prostituting herself to supply her drug habit.

There is evidence in the record that Amanda has serious emotional disturbances which could qualify her under the Individuals with Disabilities Act (20 U.S.C. § 1400, et seq.) and California's Education Code (Ed. Code, § 56000, et seq.). Her inability to pass the mathematics segment of the GED, for instance, could mean she has a learning disability in mathematics. On the other hand, it is equally possible Amanda's difficulty in mathematics is due to a lack of instruction and/or to social maladjustment which are expressly excluded from consideration for special needs. (Ed. Code, § 56026, subd. (e).) The ambiguity in the evidence is best left for the juvenile court to resolve after an evidentiary hearing should Amanda seek such a hearing on remand.

Under the current version of California Rules of Court, rule 1493(e)(5), the juvenile court must consider whether to make educational decisions for the child, or in this case, the ward. California Rules of Court, rule 1499 allows a court to limit a parent's or guardian's right to make educational decisions for a child. Under this section, the court, where appropriate, may appoint a responsible adult as an educational representative or a surrogate parent. The record establishes Amanda has not had a responsible parent or guardian supervising her needs, including her educational needs. Amanda was removed from the homes of her mother and her grandmother. There has not been a responsible adult acting as an advocate for Amanda if she does indeed qualify as a student with special needs.

Although Amanda is now an adult, she has been a ward of the juvenile court system for several years. The duty of the juvenile court is to consider all of Amanda's needs, including whether she has special educational needs. (See *In re Angela M.* (2003) 111 Cal.App.4th 1392, 1397-1399.)

We will not resolve this issue now. The dual policies of Amanda's best needs and judicial economy would not be served if the parties and the juvenile court failed to address the question of Amanda's special needs should she seek such a determination. Remand is necessary to permit the juvenile court to make proper findings, on a more fully

developed record, regarding Amanda's educational needs. (*In re Angela M., supra*, 111 Cal.App.4th 1392, 1399.)

DISPOSITION

The matter is remanded to the juvenile court for the court to set a maximum term of physical confinement in CYA based on the facts and circumstances of the matter before it. This action is remanded without prejudice to Amanda raising the issue of whether she is a ward with special needs.